

GENERAL TERMS AND CONDITIONS – DYNAMIC PLUMBING WORKS LIMITED

1. CLIENT'S ACKNOWLEDGEMENTS

1.1. A legally binding Contract is established between the two parties (based on these terms and conditions contained herein) and deemed accepted by the Client once the Client placing an order for the supply of the Materials or Works or if the Client accepts delivery of the Materials or Works from the Contractor. In such events, the Client will immediately be bound, jointly and severally, by these terms and conditions.

1.2. Notwithstanding clause 1.1, the Contractor reserves the right to charge an initial fee based on the Contractor's hourly rate, for time involved in travelling to and from a Client's worksite, the preparation of the plan and quotation, upon acceptance of the quotation this initial fee shall be waived from the overall Price for the Services. However, if the Client decides not to accept the quote or decides to go with another third party, the Client accepts and agrees that the initial fee then becomes immediately payable in accordance with the Contractor's payment terms.

1.3. No amendment of this Contract will be of any force or effect, unless in writing signed by an authorised representative of each party.

1.4. Upon signing this Contract both parties declare and confirm, they are lawfully entitled to enter this Contract (including where the Client is to act in the capacity as a trustee of any trust ("Trust"). Furthermore, the Client declares that they are not insolvent and accepts that this Contract creates an enforceable legal agreement for the Client to meet his/her obligations and responsibilities under the Contract (including payment when requested).

1.5. If the Client is primarily a Trust entity, the Client declares that the provisions of the Trust do not imply to exclude or remove the right of indemnity of the Client against the Trust. The Client agrees to notify the Contractor forthwith, if there are any substantial changes to the Trust that could affect the business relationship and the Client's obligations under this contract which includes any variations or settlements of trust assets or any changes of trustees, that may or could be the basis of any security under any contract with the Contractor.

1.6. The Client acknowledges and accepts that unless any report, description, order, or deal is stated in writing by Dynamic Plumbing Works Limited or its duly official representative, the Contractor shall not be bound by any such unapproved statements.

1.7. The Contractor's knowledge, understanding and skill is founded on the Contractor's time in the industry, thereby, any suggestions or plans provided by the Contractor during the Works to the Client or the Client's agent/representative or to do with the Materials supplied, is done so in the best interest of the Client. If the Client or the Client's agent/representative chooses to ignore such suggestions or plans when offered by the Contractor, the Contractor shall be entitled to halt the Delivery of the Materials or the commencement of the Works if the Contractor believes any harm or danger to any person and/or damage to the location, could happen, until the Contractor obtains written consent from the Client or their agent/representative to continue as planned. The Contractor shall have no liability or responsibility for any indirect or consequential injury, loss, damage, or expense whatsoever that arise, after the Contractor is instructed to commence the Works.

1.8. Materials are always subject to availability, if any ordered Materials become unavailable, the Contractor agrees to notify the Client and offer alternative Materials and will advise any changes in the quoted Price, prior to Delivery. Billing for changes in Materials supplied whether an increase/decrease will be done so, in accordance with clause 5 or an EOT as per clause 7.2.

1.9. Where the Contractor has been provided with an email address from the Client for e-communications, with their consent, the Contractor shall fully comply with all current requirements by law pertaining to electronic messaging (including but not limited to, Unsolicited Electronic Messages Act 2007).

1.10. Where it is agreed between both parties, electronic signatures, or e-signatures shall form part thereof, the acceptance to this Contract and to be deemed compliant, both parties acknowledge and agree to adhere to all required provisions pertaining to such acceptance covered by the Contract and Commercial Law Act 2017.

1.11. Any quote supplied by the Contractor based on dimension estimates and/or the number of Materials necessary for a project shall require the Client to validate the correctness of such Materials or Works, prior to acceptance and/or an order is placed. The Client accepts any differences in supply discovered after an order is placed will be subject to a variation in Price and additional costs will apply as per clause 5.

2. CREDIT ACCOUNT AUTHORITY

2.1. If a third party is to be engaged by the Client and given full authority to act on the Client behalf, as their nominated agent, in the ordering of any Materials or Works, payable under the Client's credit account with the Contractor, then the Client must advise the Contractor in writing (including any limits place on that authority i.e. \$ thresholds), prior to that party being able to request the supply of any Materials or Works.

2.2. Once the Client's nominated agent has been approved to make decisions and transactions on the Client's behalf, this authority shall continue until such time as written notice is received by the Contractor to the contrary, that the named agent, no longer has this authority to act on the behalf of the Client.

2.3. Notwithstanding clauses 2.1 and 2.2, the Client remains liable for all and any costs the Contractor suffers (including any profit margin, it is agreed, the Contractor can pass on) in providing any Materials or Works, or variation/s regardless of whether the Client requested the supply directly or the Client's nominated agent.

3. ERROR AND OMISSIONS

3.1. The Contractor shall have no liability, unless attributed to negligence and/or willful misconduct by the Contractor, arising from any typographical, clerical, or other error, mistake or omission in any information, communication or other document or information issued by it.

3.2. Furthermore, in providing any services, the Contractor shall exercise the degree of skill, care and diligence normally expected of a competent professional. The Contractor shall not however be responsible for work affected by the requirements of the Client's other trades, or architects, unless such requirements are specifically shown on any design drawings. While all care is taken to minimise errors in drawings provided by the Contractor from structural, architectural, fabrication and detailed drawings, the Contractor will not be held liable for these errors or any delays attributable to such. The Contractor will provide corrective/amended drawings because of any errors made by the Contractor at no charge, errors by others may incur extra costs.

4. PAYMENT TERMS

4.1. The Price will be as stated on the invoice supplied to the Client or as stated in the quotation (inclusive of any variations prior to acceptance but the quoted Price shall only be binding for the period offered by the Contractor, if no date is stated, then the quote shall apply for a period of no less than 30 Business Days).

4.2. Notwithstanding clause 4.1 if the Contractor is requested to supply an estimate, the Price shall not be deemed binding upon the Contractor as the full and final Price for the job, as the full and final Price can only be validated once the Works are completed. In the interest of being fair and reasonable in respect of the pricing with the Client, the Contractor agrees to keep the Client informed, if the Contractor considers the final Price may exceed more than 10% of the original estimate, so the Client can grant approval first before the Contractor continues further.

4.3. Deposits due, are at the discretion of the Contractor and the deposit amount may vary due to the nature of the Works or Materials to be supplied. Any deposit required will be stated at the time of quoting and shall become immediately due and payable to the Contractor upon the Client's acceptance.

4.4. The Price will be payable by the Client by the due date established by the Contractor, as follows:

- Prior to, or at the time of Delivery of the Works (complete with the supply of any Materials where applicable); or
- Credit Approved Client's:
 - As agreed by both parties, by the date as stated in the Contractor's schedule for payments; or
 - Upon the issue of a statement to the Client's operating business address, 21 Business Days following the end of every month; or
 - In all other cases, unless stated otherwise, the date for payment is Business Days from the date of any invoice/s issued (by email or post) to the Client by the Contractor.

4.5. Receipt for payment can be made through direct bank transfer, bank card (Mastercard or Visa, however, bank-imposed charges may apply per transaction) as acceptable payment methods. Outside of these options, the Contractor must be contacted first, before the supply of any Materials or commencement of any Works will occur.

4.6. If this Contract is subject to retention monies ("Retention Money") then such funds shall be dealt with in accordance with Subpart 2A – sections 18(A)-18(B) & 18 (I) of the Construction Contracts Act 2002. Retention Money is a set amount or equal to a percentage of the total amount of the Retention Money shall be other than to remedy defects in the performance of the Contractor's obligations under the Contract. The Client shall hold the Retention Money for the agreed period following completion of the Works during which time all the Works are to be completed and/or defects are to be remedied.

4.7. For the avoidance of doubt, it is agreed by both parties that the Client may not set-off against any monies due to the Contractor by the Client, if the Client considers the Contractor owes the Client, such Retention Money shall be automatically deducted from the Price, nor can any payment due be withheld by the Client because part of an invoice is in dispute. Where the Client believes that there has been a mistake made, and monies

are due, the Contractor requests that the Client contacts the Contractor within 7 Business Days of receipt of the invoice/statement, so that the Contractor may investigate any alleged error. If a mistake has occurred, the Client's subsequent invoice/statement will be adjusted.

4.8. Apart from where the Contractor states otherwise, GST is not included in the Price, for all relevant Materials and Services supplied (including but not limited to, all stock, services, costs, duties, fees, and freight charges) except where GST is explicitly shown as included in the Price.

5. VARIATIONS

5.1. The Contractor's Price may be subject to adjustment (upon written notice to the Client):

- Client requests a variation to the Works (including architects and structural engineers' plans, dimensions or designs, or any other contractor, the Client directs the Contractor to take instructions from); or
- If upon commencement of the Works, more Materials, Equipment or Works are necessary due to unexpected obstacles discovered, such as:
 - Access (including but not limited to, unsuitable ground conditions, blocked entrances and/or overhead obstructions effecting Delivery);
 - Adverse weather issues;
 - Any Works to be completed by a third-party contractor (including if any works need to be redone, if the Contractor finds what has been completed not to a suitable standard) engaged by the Client;
 - Fronting hazardous waste (including asbestos, contaminated ground soil, or any other form of dangerous waste);
 - Discovery any fossils, artifacts or any other remains of geological or archaeological interest;
 - Needing to dewater any mains, ducts or other conduits or channels that may flood or allow water ingress because of the Works.

(c) Unless otherwise agreed, delays of more than thirty (30) minutes in loading or loading caused to the Contractor once reported for such duties may be subject to further cost at the Contractor's hourly rate that the Client shall be responsible to bear; and

(d) Any increases or decreases with the pricing of the Materials (including parts, components, or Materials availability) or labour beyond the Contractor's reasonable control (such as; third-party suppliers' costs, fluctuations with the currency exchange rate or government/industry salary award rates etc.); and

(e) The Contractor's Price due to variations shall be allowed for at the time of the next payment claim made by the Contractor.

5.2. The Client will have the opportunity to respond to such additional costs, if no reply is received within 5 Business Days for the revised quote will be deemed to acceptance of additional charges, at the Contractor's actual cost plus the Contractor's margin (i.e. an amount to cover the Contractor's overheads, administrative costs, and profit) being fifteen (15%) percent. Failure to comply will permit the Contractor to assume that the variation invoice is accepted without dispute. Payment will be due as per the date stated on the said invoice.

5.3. Written acceptance by the Client of any variation submitted by the Contractor or EOT as per clause 7.2 must be obtained before any work pertaining to the variation is carried out. The Client must not refuse to accept a variation that is necessary for the Works to meet compliance with legal requirements.

5.4. The Contractor shall not be responsible for any variation to the Works period, if a variation reduces the Price for the Works required to achieve completion.

6. DELIVERY & RETURNS

6.1. Delivery ("Delivery") of the Materials is understood to have taken place when:

- The Materials are picked-up at the Contractor's address by the Client or the Client's representative;
- The Contractor's Delivery truck driver obtains a signed receipt of Delivery of the Materials by the Client or the Client's representative at the Client's Worksite address provided; or
- The Contractor's Delivery truck driver (after discussions with the Client) leaves the Materials as near to the Worksite address as is deemed safe (i.e. kerbside) in the driver's opinion and the Client believes the access is unsuitable and unsafe to take the weight of the load, if the Client rejects this option, additional costs for re-Delivery will apply.

6.2. Any Delivery costs associated with the supply of Materials or Works (if applicable) shall be covered as such in the quotation and will be stated on the invoice issued to the Client by the Contractor. Additional travel charges will apply where the Works are to be provided outside of a 25km radius of the Contractor's base.

6.3. Delivery dates for the supply of the Materials and/or Works will only always be an estimate, as delays may occur beyond the Contractor's control i.e., Third Party Contractors, Force Majeure, etc (including Government imposed lockdowns effecting the Contractor's suppliers and employees, if a worksite is closed and all tradespeople are required to, self-isolate). Where circumstances are beyond the Contractor's control, the Contractor will not accept any responsibility for any loss or damage incurred by the Client because of a late Delivery, however, the Contractor will at every opportunity liaise with the Client to ensure Delivery does take place, as soon as reasonably possible.

6.4. Notwithstanding clauses 6.2 and 6.3, the Contractor reserves the right to pass on a fair and reasonable charge to the Client, if the Materials need to be stored or delivered again at a later stage, if the Client is unable to take Delivery of the Materials as arranged.

6.5. Conditions apply to all Materials for return (if any), such as:

- The Client carried out the Contractor's requests detailed in clauses 9.1 and 9.2;
- The Contractor has confirmed in writing, that the returned Materials are accepted; and
- The cost of returned Materials shall be borne by the Client and within 5 Business Days of the Delivery date as stated in clause 9.1, or any other date as agreed with the Contractor; and
- Returned Materials are still in good condition (as reasonable possible) together with all the original wrapping, catalogues, and maintenance instructions together with a copy of the original invoice.

6.6. Non-defective Materials that the Contractor has agreed to accept under clause 6.5(b) (includes all underground or hidden services, if the Client is unsure of the locations of certain Materials) will be subject to, at the Contractor's discretion, a processing fee of twenty percent (20%) of the value of the Materials received back in stock, plus any freight.

7. WORKSITE ACCESS

7.1. The Client must prior to commencement of the Works:

- Make sure the Worksite access is always available and free from any obstructions or barriers to enable the Contractor to deliver any Materials or commence the Works as agreed. Heavy equipment (including trucks or trailers) may be necessary to make Delivery, therefore the Worksite needs to be able to sustain the weight of such equipment and/or vehicles. The Contractor does not accept any liability for loss or damage caused to the Worksite, during access, except if proven to be, due to the carelessness or inattention of the Contractor; and
- Make certain the Contractor, has easy access to water, electrical power supply and toilets/facilities, as required, or alternatively the Client agrees to supply a generator and port-a-loo, such costs shall be borne by the Client; and
- Upon request from the Contractor, the Client agrees to provide a safe and protected storage space on site for any Materials and/or the Contractor's equipment and the Client will accept any responsibility if any of the stored items are destroyed, stolen and/or damaged by the likes of vandals and agrees to meet the cost of replacement or repair, regardless should any insurance claim be declined; and
- For the sake of health and safety on the Worksite, the Client agrees:
 - To remove any items or personal effects that may obstruct or delay the Contractor in completing the Works in the timeframe agreed; and
 - Confirm the Worksite location is safe and stable (including but not limited to, any buildings or foundations, or if equipment for which the Materials are to be mounted or installed is secure). The Contractor reserves the right to halt the Works and seek EOT as per clause 7.2 without penalty, if the Contractor believes for any reason, the Worksite not to be safe.

(e) Advise all underground or hidden services, if the Client is unsure of the locations of all utility and hidden services in or around the Worksite area, the Client agrees to engage a third-party contractor to mark the exact locations of any underground pipes or cabling including plumbing, gas or electrical and any other services known to be on the property. The Contractor will always use all due care to avoid damaging any such services.

7.2. Extension Of Time ("EOT") – the Contractor may at any time, at his/her discretion, seek an extension of time, to put back the commencement date and/or extend the Works period for completion, by giving the Client notice, (such written notice shall include the reasons and the requested length of said extension) which the grounds of extension are based upon because of:

- Any variations as per clause 5;
- Delays (including third-party suppliers or Client supplied materials that are found to be non-compliant upon installation) in the supply or manufacture of Materials required for the Works;
- Suspension of Works if the Construction Contract Act 2002 applies;

(d) Inclement weather and the consequences of the weather to the Worksite access and safety and/or the ability to work; or

(e) A force majeure event as per clause 23 (but only for the period that the force majeure event affects the Works); and

(f) Discovery of any fossils, relics, objects, or any other environmental issues, then the Worksite will be subject to shut down until the Contractor is instructed to recommence the Works by the Client's governing authority (if applicable), further costs may apply because of any such delays, the Client will be responsible to meet such costs, subject to a variation claim; and

(g) Delay by any local or other authority in granting any necessary consent or approval; and

(h) Any act, default, delay, or omission on the part of the Client in providing instructions, making payment, or doing anything necessary (including but not limited to, selecting items for the Works, or confirming the Worksite being ready to commence the Works) to allow the Works to proceed; and

(i) Anything outside the Contractor's reasonable control.

7.3. The Client agrees to indemnify the Contractor in respect of any liability claims, loss or damage, costs or fines, resulting from the Client's action or in action of clauses 7.17.(d)(ii) and 7.17.(e) which fines the foundations, equipment or property not being able to maintain the installation or any damage to the Works due to the hidden services locations not being exactly marked.

7.4. Nothing in this Contract shall have the effect of limiting or preventing the Contractor from claiming more than one extension of time for a delay specified in clause 7.2.

7.5. Worksite inductions ("Worksite Inductions") are to be carried out, in accordance with New Zealand's Health and Safety Laws, prior to the commencement of the Services on the Worksite, regardless of whether the Client is in possession of the Worksite.

7.6. Unless otherwise agreed, where the Client requires an employee or sub-contractor of the Contractor to undertake a Worksite Induction, during or outside normal working hours, then the Client accepts the liability for additional costs (charges based on the Contractor's standard hourly labour rate (and/or overtime, if applicable)) for the time involved for the Worksite Induction that the Contractor or the Contractor's representative must undertake to complete the Worksite Induction.

8. RISK TO MATERIALS

8.1. All risk passes to the Client on Delivery, regardless of whether the Contractor is directed by the Client to leave the Materials outside of the Contractor's premises or at an unattended worksite. It shall be the Client's responsibility to insure adequately the Materials against any Force Majeure event, if the Works are delayed for more than 3 months.

8.2. The Contractor is entitled to receive all the insurance proceeds payable for the Materials should any Materials be damaged or destroyed after Delivery has happened if title to the Materials has not passed to the Client. Although the preparation of these terms and conditions is done so by the Contractor, the Contractor shall still be entitled, without prejudice to any other of its rights or remedies under these terms and conditions, to use this Contract (including invoices, consent notes or delivery dockets) with the Client, as prima facie evidence, if an insurance claim is made and thereby no further investigations ought not to be necessary.

8.3. The Client Accepts and Agrees that:

(a) Unless otherwise agreed by both parties in writing, all dimensions, plans, and specifications pertaining to the Works shall be in line with New Zealand Standards ("NZS") customary industry practices; and

(b) If any plans or specifications, or any other information supplied by the Client pertaining to the Works that the Contractor should reasonably be expected to rely on, as being compliant with NZS but are subsequently found to be inaccurate or invalid because it is proven that the Client was in breach of clause 8.3(a) unbeknown to the Contractor, then the Contractor shall not be liable for any losses, damages, or costs (howsoever arising) that the Client may suffer; and

(c) Other than a Force Majeure event, if the Works are delayed for more than a 3-month period by the Client, once a job has commenced, the Client agrees to settle all monies owed with the Contractor for completed stages and/or Materials purchased up to the date in which the delay started. The Contractor shall have the right to require the balance of Works to be performed, if the cost to the Contractor in performing such Works increases due to any increase, or the introduction of new legislation, or any other change in law, charge, levy, or legislation then the amount of the increase is to be treated as a variation and clause 5 shall apply.

(d) All Materials supplied by the Contractor with product maintenance instructions is important to follow, as failure to comply with such maintenance instructions may void any applicable warranty; and

(e) The Contractor does not accept any liability if other tradesmen contracted to the Worksite, cause any damage to the Contractor's Works during or after completion (including, but not limited to, any painted surfaces). If the Client requests the Contractor to remedy any such damage, additional charges will apply; and

(f) Materials may present variations in shade, colour, markings, and indentations, surface texture, and finish, all of which may fade or discolour over a period time. The Client, as purchaser, shall be responsible to supply any materials which are beyond the Contractor's control, however, match batching supplies and/or where new Materials are used with existing items, every effort will be made to reduce any variations wherever possible. The Contractor shall not accept liability, in any way whatsoever where such variations occur; and

8.4. Hazardous Waste (including but not limited to, any chemicals, paint, acid, gas, flinders or asbestos) discovered in or on the Worksite, will not under any circumstances be handled or removed by the Contractor.

(a) An EOT and suspension of Works will be requested as per clause 7.2; and

(b) All costs of removal of such waste shall be borne by the Client's;

8.5. If temporary repairs are performed by the Contractor:

- The Contractor offers no guarantee against the recurrence of the initial fault, or any other damage caused; and
- Blockages found in existing drains due to the existence of plant root growth which is normally a sign there is damaged pipes that cannot be properly fixed by simply removing the root growth or blockage. If the Client chooses not to instruct the Contractor to carry out the Works of repair or replace damaged pipes or drains, then the Contractor gives no guarantee that the same or similar problems will not recur. The Client will be advised immediately of such an event together with an estimate for the cost of the repair.

(c) If the Contractor's needs to use specialised equipment to establish the exact section of damage, the Client agrees to confirm in writing that should such equipment becomes lodged or is damaged while in the Client pipes or drains, the Client agrees to indemnify the Contractor the costs of removal of the equipment including any necessary additional excavation and restoration work; and

(d) The Client will be advised immediately of the fault, with an estimate for the full repair required; and

(e) The Contractor only accepts responsibility for the Materials that it replaces, no liability is accepted in respect of any previous goods or services supplied by any other third party that subsequently fail after the Contractor has conducted its temporary repair as requested and it is later discovered that the previous components or services were the actual source of the failure.

(f) Any equipment partly or completely installed on the Worksite, is the Client's responsibility to insure adequately against theft or damage.

9. DEFECTS LIABILITY PERIOD "DLP"

9.1. The Client agrees to examine the Materials (Works on completion) on Delivery and shall satisfy itself as to the conformity of the Materials (with the quotation, description, purchase order or any other document which forms part of this Contract, that the Materials are of merchantable quality, fit for purpose and in a useable condition).

9.2. If the Client discovers a defect in the quality, or a shortage in the quantity of the Materials, or a failure to comply with the Contractor's quote and these terms and conditions, they must immediately notify the Contractor of that defect. If no notice is received by the Contractor within 5 Business Days from the time of Delivery, then the Materials and Services shall be assumed to be accepted and clear from any defect or fault.

9.3. The DLP shall be 12 months from the date that the Client is advised that the Works have been completed. The Contractor shall rectify (at the Contractor's own expense) any defects or omission that becomes apparent in the said Works during the DLP provided that the Client has notified the Contractor in writing of any such defects or omissions no later than 30 Business Days after the expiry of the 12 month period.

9.4. The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon the Contractor which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on the Contractor, the Contractor's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute. For avoidance of doubt, where the Client acquires, or holds themselves out as acquiring, the Materials and/or Works for business purposes, the Consumer Guarantees Act 1993 does not apply and as defined in clause 13.

9.5. Subject to clause 9.4 and to the extent permitted by law, the Contractor's liability in any case of any defect or fault, or otherwise under this Contract, shall be limited to:

(a) The value of the total amount of the invoice to the Client; or

(b) The value of the total amount of the invoice to the Client, or the value of the Materials and/or Services of which such liability arises. The Contractor shall

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have no liability or responsibility for any indirect or consequential injury, loss, damage, or expense whatsoever and howsoever.

10. WARRANTIES

- 10.1. Only a **manufacturer's warranty** will apply (if any), where the Contractor has not actually manufactured the Materials. The Contractor will not be liable in any way or be required to meet any obligation given under a manufacturer's warranty. In the event of a claim, the Client must deal directly with the manufacturer.
- 10.2. Any **expressed warranty** offered by the Contractor regarding any Materials will be clearly detailed in the Warranty Document, which will be provided with the Materials, at the point of sale and/or installation.

11. INSURANCE

- 11.1. The Contractor will have in place:
- (a) **Public Liability Insurance** - with appropriate cover for loss or damage to any other property, or injury or death or illness which arises from carrying out the Contractor's Works of not less than \$5 million. It is the Client's responsibility to ensure that they are similarly insured; and
- (b) **Contract Works Insurance** (where applicable); if the **Contract is over \$30,000**, these terms and conditions will not comply as such contracts require a comprehensive Building Contract (between the two parties) in accordance with the Building Amendment Act 2013. With contracts \$30,000 and over, it is the Contractor's responsibility to arrange this insurance on new builds where he is contracting directly with the homeowner, and the Client's responsibility if the Works are for any existing structure; and
- (c) **Professional indemnity** (if applicable).

12. TITLE

- 12.1. Title in the Materials and/or Works pass to the Client when payment for those Materials and/or Works (together with any additional interest or charges as set out in these terms of Trade) have been made in full by way of cleared funds and the Client's obligations have been fulfilled.
- 12.2. Until such time as title passes to the Client:
- (a) All Materials are held on trust by the Client in their capacity as "bailee" for the Contractor and upon request the Client is required to return all uninstalled Materials to the Contractor where payment has not been affected;
- (b) The Client agrees and gives permission to the Contractor to access any property considered to be housing the Materials and take back possession of them, without any Contractor liability for any loss or damage caused to the Client;
- (c) If any Materials are lost, damaged, or destroyed, the Client acknowledges and agrees to indemnify the Contractor by way of the proceeds of any insurance claim as per clause 8.2.
- (d) If possession of the Materials passes to another by way of sale or the Client does anything to the Materials which changes its form, then the Client as per clause 12.2(a) must hold such funds from this transaction on trust for the Contractor, and make payment immediately upon demand.
- (e) At no time shall the Client be entitled to use the Materials as a form of security (including but not limited to, executing a charge or lien over the Materials when ownership of the Materials has not taken place).

13. OTHER LEGISLATION

- 13.1. If the Client is acquiring Materials or Works for the **purposes of a trade or business**, the Client acknowledges that the provisions of section 43 of the Consumer Guarantees Act 1993 ("CGA") and section 5D of the Fair Trading Act 1986 ("FTA") do not apply to the supply of Materials or Services by the Contractor to the Client, nor will the provisions of the FTA apply to either parties conduct or representations if unintentional: section 9 (misleading conduct), section 10 (unsubstantiated representations) or section 13 (false or misleading representations).
- 13.2. If the Client is acquiring Materials or Works in the capacity as a "consumer" as defined in the Consumer Guarantees Act 1993 and the Client is not in trade, nothing in the Contract will exclude or limit the Client's rights or remedies under the Act.
- 13.3. Both the Contractor and the Client agreed to comply with all governing laws (including the provisions of all statutes, regulations, and bylaws of Government, local and other public authorities) of New Zealand applicable to the Materials and Works and agree that nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Construction Contracts Act 2002 (unless section 11 of the Act is applied), ss3621 to 362K of the Building Act 2004, Plumbers, Gasfitters, and Drainers Act 2006 and the Health and Safety Act 2004 Act 2015 ("the HSW Act") and the Resource Management Act 1991 (relating to the use, storage and/or disposal of any surplus Materials and/or waste from the worksite) and the Fair Trading Act 1986 (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 13.4. The Client will be responsible, at the Client's expense to:
- (a) Obtaining any permits, consents, or approvals applicable to the Works, unless otherwise agreed between the two parties; and
- (b) Ensure that the Client supplied materials are fit for purpose and their intended use. If in the Contractor's opinion, it believes that the materials supplied are non-conforming products which will not meet New Zealand regulations (Building Code), the Contractor shall be entitled, to reject such materials and/or halt the Works, without prejudice, until the appropriate conforming products are obtained. All costs associated with a change to the plans or specifications will be incurred in accordance with clause 5.
- 13.5. If the Client is in breach of clause 13, then the Client accepts and agrees to indemnify the Contractor against all claims, liability, losses, or costs imposed or incurred by the Contractor, because of such a breach.

14. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

- 14.1. The Client will make available all relevant paperwork and do such acts and execute such further documents as in the opinion of the Contractor may be necessary or desirable to enable the Contractor to perfect under the PPSA the security interest created by these terms and conditions.
- 14.2. The Contractor may do all things which it thinks desirable to remedy any default by the Client or otherwise protect all Materials or the security interest created by these terms and conditions.
- 14.3. The Client irrevocably appoints the Contractor to be the Client's attorney to do anything which the Contractor agrees to do under these terms and conditions and anything which the attorney thinks desirable to protect the Contractor's interests under these terms and conditions and the Client ratifies anything done by an attorney under this clause. The Client agrees sections 114(1)(a), 133 and 134 of the PPSA shall not apply to these terms or the security under these terms and conditions.
- 14.4. The Client agrees and waives their right to give a copy of the verification statement confirming registration of a financing statement or a financing charge statement relating to the security interest created by these terms and conditions.
- 14.5. The Client agrees that none of the Client's rights as debtor under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall apply to these terms and conditions.
- 14.6. The Client also agrees that where the Client has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- 14.7. The Client must not change the Client's name without first notifying the Contractor of the new name not less than 7 Business Days before the change takes effect.
- 14.8. The Client must not allow or permit the creation of a lien over any of the Materials.

15. SECURITY AND CHARGE

- 15.1. The Client acknowledges and accepts that by accepting these terms and conditions, it charges all its rights, title, and interest (whether joint or several) in any land, realty, or other assets capable of being charged (including, but not limited to, the payment of all monies owed at any time), owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions.
- 15.2. The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
- 15.3. The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.

16. INTELLECTUAL PROPERTY

- 16.1. All rights, title, and interests in and to all Intellectual Property created for the Client by the Contractor shall become part of the Contractor's Intellectual Property that the Contractor is entitled to retain, unless the Client is to purchase said rights for an agreed Price. Use of such Intellectual Property created shall only be for the Client's specific project, use on or in, any other project or matter is prohibited unless the Contractor grants permission in writing.
- 16.2. The Client agrees to indemnify the Contractor against any claims by third parties for any breach of Intellectual Property caused by the Client. Furthermore, where the Client has supplied any Intellectual Property to the Contractor, the Client warrants that the supply of such Intellectual Property does not breach any patent, trademark, design, or copyright.
- 16.3. The parties agree, unless the Client is to make purchase to the rights of any Intellectual Property created for them by the Contractor, that the Contractor retains all rights, to

the use of said Intellectual Property for the Contractor's own benefit, such as, in the use of promoting their business or advertising thereof, or for entry use, on any worldwide industry platform.

17. DEFAULT

- 17.1. In any event, the Contractor reserves the right to charge the Client default interest in respect of the late payment of any sums due under this Contract, at the rate being 2% per calendar month (2.5% per calendar month interest shall accrue daily and will compound monthly), from the due date until receipt of payment, from the due date until receipt of payment, and also prior, to any judgment being awarded by a court of law.
- 17.2. For the sake of clarity, the Contractor has the right to suspend or bring the whole Contract to an end, or parts thereof, or any other contract or contracts with the Client, in addition to its other remedies, upon the happening of any of the following events of default:
- (a) Where monies owed by the Client to the Contractor remain outstanding; or
- (b) If the Client breaches, or fails to comply or repudiates, any obligation under this Contract or any other subsequent contract with the Contractor; or
- (c) The Client intimating that they will not pay any sum by the due date; or
- (d) Any Materials seized by any other creditor of the Client or any other creditor intimates that it intends to seize the Materials; or
- (e) Any Materials in the possession of the Client are materially damaged while any sum due from the Client to Contractor remains unpaid; or
- (f) The Client dies, becomes insolvent or subject to bankruptcy laws, calls a meeting of creditors, or if a company - enters into an arrangement with creditors or makes an assignment/compromise for the benefit of its creditors, or receivers, managers, liquidations (provisional or otherwise), administrators or any similar party is appointed in respect of the Client (or any asset of the Client), has any winding up petition presented against, or ceases to carry on business; or
- (g) If the Client ceases or threatens to cease carrying on business; or
- (h) If the ownership or effective control of the Client is transferred, or the nature of the Client's business is materially altered.
- 17.3. Whether this contract is ended by mutual agreement or due to any breach by the Client, all monies owed by the Client (including any interest or costs due) to the Contractor shall become immediately due and payable. Without limiting the effect of this clause 17.3 it shall survive the end of this Contract, and any other terms and conditions which by their nature are intended to survive.
- 17.4. Where any event of default occurs, the Contractor may appoint a receiver in respect of all Materials and/or Works owned by the Contractor, which may include charges incurred by the Contractor from their banking institute for dishonours or chargebacks, legal costs on a solicitor and own client basis, inhouse admin fees or any fees charged during the debt recovery process, if a debt is passed to a recognised Debt Collection Recovery Agency).
- 17.5. Notwithstanding clause **Error! Reference source not found.**, it is further agreed that if the Client owes the Contractor any money, the Client agrees to reimburse the Contractor all costs and expenses suffered by the Contractor in their attempt to recover all overdue monies owed to the Contractor, which may include charges incurred by the Contractor from their banking institute for dishonours or chargebacks, legal costs on a solicitor and own client basis, inhouse admin fees or any fees charged during the debt recovery process, if a debt is passed to a recognised Debt Collection Recovery Agency).

18. CANCELLATION

- 18.1. **By the Contractor:**
- (a) At any time before the Works are carried out upon provided the Client 7 Business Days' notice in writing; or
- (b) Upon the required notice being given under section 24A (relating to suspension or terminations) of the Construction Contracts Act 2002 (if applicable); and
- (c) The Contractor agrees to refund the Client any funds paid by the Client in respect of the Materials or Works, less any amount owing to the Contractor for any Materials purchased on the Client's behalf where credits or refunds cannot be obtained from the Contractor's third-party suppliers; and
- (d) The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has relied on its rights covered in this clause.
- 18.2. **By the Client:**
- (a) Prior to Delivery of the Materials and/or Works, by giving no less than 7 Business Days written notice, the Client remains liable for any costs incurred by the Contractor (including, but not limited to, loss of profit) up to the time of cancellation; or
- (b) Where the Client cancels an order that has commenced:
- (i) The initial notification may be by telephone or email but must be confirmed in writing to the Client by the Contractor;
- (ii) The Client shall be invoiced for all work completed up until the date of cancellation. Any deposit paid prior to the commencement of the Works will be forfeited in lieu of monies due, however, the Client remains liable for any monies due over and above any deposit paid; or
- (iii) At the Contractor's discretion, where failure of clause 18.2(b)(i) occurs, the Client shall be required to pay the full quoted price to the Contractor.
- (c) Cancellation is not accepted by the Contractor if the new Materials have been used, if the Client later changes their mind, unless the cancellation is subject to the Consumer Guarantees Act 1993.

19. PRIVACY POLICY

- 19.1. In accordance with the Privacy Act 2020 and full disclosure, the Contractor has advised the Client that Personal Information will be collected, handled, used, and stored about the Client during the business relationship and thereby, the Client grants consent to the Contractor to proceed with any inquiries with any third party necessary for the following purposes:
- (a) Assessing the Client's credit risk (if any);
- (b) Administering the Client's orders;
- (c) Receiving information from one or more credit reference agencies, relating the credit record and repayment history of the Client;
- (d) Disclosing credit-related information to, and using the credit services of, one or more credit reference agencies, on a continuing basis at any time and entirely at its discretion concerning the Client's credit worthiness.
- 19.2. For the avoidance of doubt, all authorities given above are continuing authorities, to apply throughout the duration of the term of the Contractor and Client's trading relationship.
- 19.3. The Client, if an individual, has a right of access to Personal Information about the Client held by the Contractor and may request correction of the information.
- 19.4. For the purposes of this clause 19, Personal Information has the meaning given to it in the Privacy Act 2020.

20. NOTICES

- 20.1. If either party gives or is required to give notice to the other party under this Contract, it must be:
- (a) In writing;
- (b) Be given directly to the other party concerned;
- (c) Directed to the recipient's address for service of notice, specified in the quotation or proposal (Contract details) or as advised from time to time; or
- (d) Sent by pre-paid post; or
- (e) Email address that was given to the Contractor by the other party for the purposes of service.
- 20.2. **Notice is taken as received when:**
- (a) A notice given in accordance with clause 20.1 is taken to be received; or
- (b) Given to the Contractor or on delivery;
- (c) If sent by prepaid post, 5 Business Days after the date of posting for local or regional mail and 10 Business Days after the date of posting for international mail; or
- (d) If sent by courier mail, immediately upon signed receipt thereof; or
- (e) If sent by email, upon the time denoted in an automated receipt notification received by the sender in the absence of manifest error or tampering; or, if that function is not enabled, upon acknowledgement of receipt by the other party by return email or otherwise).

21. DISPUTE RESOLUTION

- 21.1. If either party has any dispute or disagreement in connection with, or arising out of, this contract that party must give the other party written notice, clearly identifying, and providing full details of the dispute. Both parties, if unable to do so themselves, will appoint one representative to act on their behalf to try to settle the dispute (each party shall bear their own costs associated with any mediation method chosen). Failure to settle the dispute by the representatives and/or by mediation within 10 Business Day (or whatever timeframe allowed) after service of the written notice shall allow either party to issue a further notice (subject to clause 20.1) to the other party stating that this dispute is now to be referred to a sole arbitration and the provisions of the Arbitration Act shall apply or where the Construction Contract Act 2002 "CCA" applies, the matter shall be dealt by initiating adjudication and appointing an adjudicator as per Part 3 of the CCA.
- 21.2. Nothing shall restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or protect and proprietary or trade secret right.
- 21.3. Furthermore, the Client agrees not to contract any third party to replace the Contractor as their provider of the Works to be supplied under this contract until the dispute resolution process in clause 21.1 has been completed, and then only if

arbitration has found against the Contractor in its determination, and the Contractor is unable or unwilling to resolve, rectify or correct the issues that have led the arbitrator to find against the Contractor.

22. ASSIGNMENT

- 22.1. Neither party shall assign, sub-licence or otherwise transfer this Contract or any part of it to any other person, without not firstly obtaining written consent (hardcopy or email) of the other party. Such consents shall not be unreasonably withheld or delayed.
- 22.2. Unless specifically stated otherwise, in any consent to an assignment (as covered in clause 22.1), no assignment shall release or discharge the assignor from any liability or obligation under this Contract.
- 22.3. Furthermore, it is agreed between the parties that the Client cannot give any instructions or redirect the performance of the Works of any of the Contractor's subcontractors or third-party suppliers that are engaged to carry out any part of the Works, without firstly obtaining written consent from the Contractor.

23. FORCE MAJEURE

- 23.1. Both parties are freed from any liability or obligations, if a Force Majeure event occurs: (a) The obligations of a party under this Contract will be suspended to the extent that it is wholly or partially precluded from complying with its obligations under this Contract by Force Majeure; and
- (b) A party affected by Force Majeure must notify the other party as soon as practicable of the Force Majeure and the extent to which that party is unable to comply with its obligations; and
- (c) If a failure or delay in performance exceeds 60 Business Days, either party may immediately terminate this Contract by written notice to the other party.
- 23.2. Nothing in clause 23.1 shall excuse payment of any amount owing due or which becomes due under the terms of this Contract.

24. MISCELLANEOUS

- 24.1. If any term or obligation of this Contract is at any time held by any jurisdiction to be negated, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other of these terms and conditions.
- 24.2. The legality, construction and performance of this Contract shall be governed by the laws of New Zealand. The Client agrees that any dispute arising from the Contract between the two parties that cannot reasonably be resolved by mediation shall then be litigated only, by the jurisdiction of the Auckland Courts of New Zealand.
- 24.3. THE CONTRACTOR WILL NOT BE LIABLE FOR ANY LOSS CAUSED BY A FAILURE BY THE CLIENT TO COMPLY WITH THE CLIENT'S OBLIGATIONS UNDER THIS CONTRACT. FURTHER, THE CONTRACTOR'S TOTAL LIABILITY WILL NOT, UNDER ANY CIRCUMSTANCES, EXCEED THE PRICE OF THE MATERIALS OR WORKS SUPPLIED OR PERFORMED, PURSUANT TO THIS CONTRACT.
- 24.4. The Contractor reserves the right from time to time to amend their terms and conditions, but for disclosure purposes any amendments shall always be provided in writing to the Client and/or notified by email that the updated terms and conditions are posted and ready for viewing on the Contractor's website. The amended terms and conditions take effect for any new contracts from when the Client accepts the updated terms and conditions and/or from when the Client asks the Contractor to deliver/supply additional Materials and/or Works.

25. DEFINITIONS AND INTERPRETATION

- 25.1. In this Contract, unless the context otherwise requires capitalised terms have the meanings set out below.
- (a) **"Business Days"** means a day on which banks are open for business in New Zealand other than a Saturday, Sunday, or public holiday.
- (b) **"Client"** means the person/s, entities (including but not limited to, partnerships and/or a trust and where applicable shall include the Client's executors, administrators, successors and permitted assigns) or any person with written consent given by the Client to act on the Client's behalf to request the Contractor to provide Goods and Services as specified in any quotation, purchase order or other documentation.
- (c) **"Confidential Information"** means any information:
- (i) Relating to this Contract;
- (ii) Relating to a quotation, order or proposal or its contents;
- (iii) Relating to a Client of the Contractor
- (iv) Disclosed by either party to the other party on the express basis that such information is confidential; or
- (v) Which might reasonably be expected by either party to be confidential in nature.
- Provided that, where information relates exclusively to one party, nothing in this Contract will require that party to maintain confidentiality in respect of that information.
- (d) **"Contract"** means this Contract, inclusive of its terms and conditions contained herein, its schedules and annexes or any quotation, proposal, invoice, or document that forms part thereof and/or is deemed to be supplementary to this Contract.
- (e) **"Contractor"** means **Dynamic Plumbing Works Limited**, their successors, and their assigns.
- (f) **"Force Majeure"** means an event outside the reasonable control of either party, including an act of God, earthquake, adverse weather conditions, flood, storm, fire, explosion, war, rebellion, terrorism, strike, lock-out, industrial action national or global epidemics or pandemic and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government quarantine restrictions for Materials and/or individuals.
- (g) **"GST"** means Goods and Services Tax, as defined within the Goods and Services Tax Act 1985.
- (h) **"Intellectual Property"** means and includes (whether invisible, electronic or any other form) all brands, and symbols, names and images used in commerce, goodwill, logos, formulae, techniques, know-how, specifications, designs, drawings, copyrights, manufacturing processes, patents, and trademarks (if any, whether registered or not, software (and source and object code), business strategies and contracts, confidential business information including market and marketing strategies.
- (i) **"Materials"** means Materials, equipment, parts, of any kind that the Contractor provides to the Client as specified in any Contract, quotation, proposal, order, or any other documentation.
- (j) **"Personal Information"** means information about an identifiable individual by ways of their name, address, D.O.B., occupation, driver's license details, electronic contact type details, such as, email, IP address, social media such as: Facebook, or Twitter, or next of kin and any other contact information (if applicable) and were deemed relevant shall include any previous credit applications or credit reporting status. By the nature of such information, it shall always be considered Confidential Information.
- (k) **"PPSA"** means Personal Property Securities Act 1999.
- (l) **"Price"** means the Price due under this Contract for the supply of Materials and/or Works as detailed in any quote or proposal or invoice and duly accepted by the Client and (if applicable) shall include any GST payable.
- (m) **"Works"** means all Works (including any documentation, advice, consultancy, or any other services) and where these terms and conditions give allowance to, the terms "Materials" or "Works" may be identified and substituted for the other) supplied by the Contractor to the Client, and are as described on the invoices, quotation, authorisation form or any other forms as provided by the Contractor to the Client.
- (n) **"Worksite"** means the land (or that part of the land) that the Contractor reasonably needs to occupy to carry out and practically complete the Works required under this Contract.
- 25.2. In this Contract, unless the context requires otherwise:
- (a) **Headings:** Headings to clauses are for convenience only and shall not affect their interpretation;
- (b) **Joint obligations:** If there is more than one person or party to this Contract herein, this Contract shall bind all persons and parties jointly and severally;
- (c) **Parts of Contract:** References to this Contract shall include its clauses, cross references, schedules, appendices, or any other document relevant to the Contract;
- (d) **Plurals:** Words importing the singular shall include the plural and vice versa and words importing the masculine, feminine and neuter shall include all three;
- (e) **Price:** Reference to dollars or \$ is to an amount in New Zealand currency;
- (f) **Statutory Requirements:** A reference to any Act or Regulation shall include subsequent Acts or Regulations in amendment of, or substitution for, the same.
- 25.3. **Neutral Interpretation** - nothing in this Contract is to be interpreted against a party solely on the ground that that party put forward this Contract or a relevant part of it.